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ADVOCATES
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December 21, 2000

DOT Docket No. FMCSA-2000-7918 - 4
Docket Clerk, Room PL-401
U.S. DOT Docket
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Qualification of Drivers; Exemption Applications; Vision
Notice of Applications for Exemption from the Vision Standard
65 Fed. Reg. 66286, November 3, 2000

Advocates for Highway and Auto Safety (Advocates) files this supplemental comment with the Federal Motor Carrier Safety Administration (FMCSA) to underscore concerns regarding agency reliance on applicant self-reported information in making determinations to grant exemptions from the prescribed vision standard of the Federal Motor Carrier Safety Regulations, 49 Code of Federal Regulations § 391.41(b)(10). It is well documented elsewhere that self-reported information is not an accurate method for determining facts. Advocates has previously pointed out in exemption dockets that much of the information reported by the applicants for vision exemptions is self-reported information that is not independently verified by the agency. In at least two recent cases, it has become evident that the three year commercial driving experience of the applicants is also self-reported and not regularly verified by the agency.

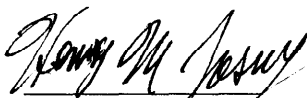
In the above captioned docket, the FMCSA represented to the public that applicant number 38, Mr. J.B. Mazyck, has met the required three-year driving experience criterion and, in fact, has "operated straight trucks for 4 years, accumulating 100,000 miles." 65 FR 66286, 66290 (Nov. 3, 2000). Comments filed by the United Parcel Service (UPS) indicate that the applicant had been driving a commercial motor vehicle for only two years and four months at the time he filed his application for exemption. UPS comments to U.S. DOT Docket No. FMCSA-2000-7918-3 (dated Dec. 4, 2000). Prior to being employed as a driver, the applicant performed non-driving duties. *Id.*, attached Declaration of Richard L. Saucier. Since the record presented to the public does not detail the driving history of the applicant, Advocates is unable to determine whether Mr. Mazyck had any other "recent" driving experience prior to, or concurrent with, his non-driving UPS employment. According to the UPS comment, Mr. Mazyck "occasionally worked as a substitute driver" but his application indicated that he claimed to have been a "regular temporary driver" in 1995." UPS comments, p. 2 (emphasis in original). Lacking concurrent driving experience with an employer other than UPS (and apparently none



was reported on the application),¹ it appears that the applicant did not meet the agency criteria requiring three years of driving experience immediately prior to the date of application. Had this been known to the agency, or had the agency independently verified the information and investigated the self-reported claims made in the application, the issue could have been addressed prior to publication of the agency notice and the representation to the public that the applicant had four years of driving experience.²

In a separate instance, the FMCSA has admitted that another applicant did not have the requisite three-year driving experience required to meet the agency criteria for exemption. The agency made a preliminary determination to grant a vision exemption to Mr. Kevin Cole on the basis of information he provided indicating that he had driven commercial motor vehicles for the past 30 years. 65 FR 45817, 45819 (July 25, 2000). The agency notice also stated that the applicant's "official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years." *Id.* Subsequently, agency staff learned that Mr. Cole had not driven a commercial vehicle during the three-year period prior to his application. 65 FR 77066 (Dec. 8, 2000). The agency therefore denied the application, overturning its preliminary determination to grant the application. *Id.* Advocates is unable to determine from the facts as presented whether the agency uncovered this information because the application raised a specific concern that led to additional investigation, or whether the revelation was a chance discovery. Regardless of how it came about, this case underscores the need for the FMCSA to check the facts in each and every exemption application.

These two situations provide clear evidence that the agency cannot rely on self-reported information to screen applicants for exemption. There almost certainly are other cases in which information provided by the applicants are inaccurate or untrue. In the two recent examples described above the agency obtained more accurate information only because of the diligence of an employer and because of a subsequent conversation with the applicant. These incidents are a concern and should cause the agency to investigate each application carefully, to verify information with employers and others, and to ensure that self-reported information is accurate prior to noticing exemption application requests for public comment.



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¹Since the FMCSA does not publish the exemption applications nor does it make them available for public review in the docket, Advocates relies on the representations in the UPS comments regarding the statements contained in Mr. Mazcyk's application.

²The discrepancy as to Mr. Mazcyk's years of driving experience also directly implicates his self-reported and unverified estimate of 100,000 miles of accumulated driving.